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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,328	04/13/2004	Mark A. Rochrig	58077US003	4482
32692 7590 06/19/2009 3M INNOVATIVE PROPERTIES COMPANY PO BOX 33427 ST. PAUL, MN 55133-3427				
EXAMINER MAEWALL, SNIGDEHA				
ART UNIT		PAPER NUMBER		
1612				
NOTIFICATION DATE		DELIVERY MODE		
06/19/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

LegalUSDocketing@mmm.com
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Office Action Summary

Application No.

10/823,328

Applicant(s)

ROEHRIG ET AL.

Examiner

Snigdha Maewall

Art Unit

1612

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 10, 11, 13 and 14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 10-11, 13-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Summary

1. Receipt of Applicants arguments, amended claims and RCE filed on 03/20/09 is acknowledged.

Claim 1 has been amended. Claims 5-9 and 15-20 remain withdrawn. Claim 12 has been cancelled.

Claims **1-4, 10-11 and 13-14** are under prosecution.

Unless specifically repeated, the rejections made in previous office action have been Withdrawn in view of claim amendments.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 10-11 and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pilgard et al.(US PG pub. 20050019383) in view of Shaw et al. (USP 6231939).

Pilgard et al. teaches patches for dermal and transdermal drug delivery (abstract). The reference teaches barrier layer separating the active ingredient from the

adhesive. The barrier layer may be in the form of a polymer or a metal layer impermeable to the active ingredient and to the adhesive layer (see page 1, paragraph [0004]). The article has adhesive layer which adheres to skin, which has a first component constituting a continuous layer and at least a second component which is located in indentations in the adhesive surface of the first component and the second component is separated by barrier layer (see paragraph [0016], page 1). The second component may act as reservoir. (See paragraph [0022]). The barrier layer may be arranged in a pattern over the dressing in order to distribute the active ingredient in a desired way (see paragraph [0048] on page 3). The barrier layer comprises a metal foil which could be aluminum or a laminate of one or more layers or plurality of barrier layers (see paragraphs [0025, 0026, 0028 and 0048] on pages 2 and 3. The article comprises a backing layer which may be polyurethane film or foam or combination of film layers (see paragraph [0051]), (instant specification exemplifies polyurethane as one of the components constituting the backing layer, see page 8 second paragraph). The flange which is a continuation of barrier layer is taught to be of an average thickness of less than about 0.045mm (see page 1, paragraph [0016]). Therefore, regarding the claimed size of the barrier layer, it is the position of the examiner that optimization of such parameter would have been within the purview of a skilled artisan absent evidence of any unexpected results associated with the claimed size.

Although the reference discloses the barrier layer as constituting metal foil, it does not specifically recite aluminum oxide or other metal oxides as claimed in instant claim 1.

Shaw et al. disclose deposition of barrier films for inhibiting penetration by oxygen or other gases employing a cross-linked acrylate layer and a layer of oxygen barrier material see column, 1 line 14-17. The reference further teaches that a transparent barrier film may be formed on a polyethylene, polypropylene, polyester or nylon substrate, or other thermoplastic substrate. First, a layer of acrylate monomer is deposited on the substrate and cross linked. The acrylate layer is then coated with an oxygen barrier layer of silicon oxide and aluminum oxide, both of which have good resistance to oxygen permeability. The high temperature resistance of the cross linked acrylate layer permits the notably higher temperature deposition of silicon oxide or aluminum oxide on the thermoplastic substrate see column, 3 lines 14-22. .

It would have been obvious to one of ordinary skill to have incorporated a barrier layer comprising aluminum oxide or silicon oxide in the teachings of primary reference in order to have good resistance to oxygen permeability motivated by the teachings of secondary reference.

Furthermore, it would have been obvious to one of ordinary skilled in the art to modify the application of barrier layer and make it substantially continuous since the prior art teaches that the barrier layer may be arranged in a pattern over the dressing in order to distribute the active ingredient in a desired way and come to the claimed invention with a reasonable expectation of success. Based on the teachings of the prior

art , it would have been obvious to one of ordinary skilled in the art at the time of the instant invention to prepare a transdermal drug delivery device comprising reservoir, a barrier layer and backing layer with a reasonable expectation of success.

Response to Arguments

4. Applicant's arguments with respect to claims 1-4, 10-11 and 13-14 have been considered but are moot in view of the new ground(s) of rejection.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Snigdha Maewall whose telephone number is (571)-272-6197. The examiner can normally be reached on Monday to Friday; 8:30 a.m. to 5:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass can be reached on (571) 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-0580. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO

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Customer Service Representative or access to the automated information system, call
800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Snigdha Maewall/

Examiner, Art Unit 1612

/Gollamudi S Kishore/

Primary Examiner, Art Unit 1612